IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5109 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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DD AGRAWAL - DIRECTOR RASRANJAN FOOD PRODUCTS LTD.

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 5109 of 2005

MR SI NANAVATI, SENIOR ADVOCATE WITH
MR NIRAV C THAKKAR for Petitioner No. 1
MR DIPEN DESAI ASSTT GOVERNMENT PLEADER for Respondent No. 1
..... for Respondent No. 2-3
MR RM CHHAYA for Respondent No. 4

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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 09/05/2005

ORAL JUDGEMENT

Rule. Shri Dipen Desai, the learned AGP waives service of Rule on behalf of the respondent Nos.1, 2 and 3 and Shri R.M.Chhaya, the learned advocate appears and waives service of rule for respondent No.4 - Ahmedabad Municipal Corporation.

With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

.RS 2.

#. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Commissioner of Police, Ahmedabad city dated 14.3.2005 as well as the order passed by the Deputy Commissioner of Police, Zone-1, Ahmedabad dated 26.11.2004, by which, the licence issued in favour of the petitioner to run restaurant came to be cancelled.

#. The petitioner is the Director of Rasranjan Food Products Ltd. and that they were granted licence to run restaurant in the year 2001-02. It appears from the record that such licence to run restaurant was granted by the Commissioner of Police on condition to provide requisite parking for their customers and on the representation made by the petitioner that they are having requisite facility for parking for their customers and even building plan was submitted showing that they are having parking facility for their customers and guests. It appears that as licencing authority was not satisfied with regard to parking facility as per the requirement and that as per guidelines issued by the Indian Road Council ( hereinafter referred to as the "IRC" for brevity ), looking to the strength and flow of the customers, 752 sq.mtrs of space was required for the purpose of parking. However, there was no facility for parking at all and therefore, by communication dated 4th March, 2001 the petitioner was directed to provide parking facility to the extent of 752 sq.mtrs of space on or before date 2.4.2001, failing which, the licence to run restaurant would be canceled on 3.4.2001. It appears from the record that by communication dated 22.3.2001, the Director informed the Commissioner of Police that they will be providing the parking facility as per the plan sanctioned along with the said application and as soon as the parking facility is provided, he will inform the Commissioner of Police. As nothing was done inspite of the aforesaid assurance for a period of two years and thereafter by communication 4.9.2003, the Commissioner of Police, Ahmedabad City directed the petitioner to provide the parking facility as per their assurance dated

4.3.2001 and 23.3.2001 between a period of seven days, failing which, the licence would be canceled. Instead of providing the parking facility as per their assurance, by communication dated 11.9.2003 the petitioner informed the Commissioner of Police, Ahmedabad city that they are having parking facility of 25 ft x 10 ft of both the sides which come to 500 sq.fts. and outside the restaurant also, there is parking facility available to the extent of 80 ft x 6 ft. and that over and above that there is facility of "Paid Parking" provided by the Ahmedabad Municipal Corporation. Having not satisfied with that and as the petitioner did not provide any parking facility though number of opportunities were given and though assurance was given by the petitioner at last, by order dated 26.11.2005 the Deputy Commissioner of Police, Zone-1, Ahmedabad city cancelled the licence which was granted in favour of the petitioner to run restaurant by holding that inspite of number of opportunities given, there is no parking facility provided and on the contrary, the space which was earmarked for parking is changed and there is no parking space available and that at the relevant time when the petitioner obtained the licence, the petitioner has represented that they are having independent parking facility. Thus, they have given a false representation and misled the authority.

#. Being aggrieved and dissatisfied with the order passed by the Deputy Commissioner of Police, Zone-1, Ahmedabad dated 26.11.2004 the petitioner has preferred the appeal before the Commissioner of Police, Ahmedabad City on 3.11.2004 and had submitted that they are having provided the parking facility to the extent of 1196 sq.fts and are allowing the customers to park their vehicles and they are also having their independent security personnels and that they are having requisite parking facility and they are trying they best for providing parking facility. The petitioner was given an opportunity by the Commissioner of Police, Ahmedabad City by communication dated 6.12.2004 to produce necessary documentary evidence to show that they are having adequate parking facility of their own. In response to the said communication dated 6.12.2004, the petitioner produced one copy of the plan showing the parking facility which is at Annexure-I to the petition. Having not satisfied with that, and having found that there is no parking facility even for four wheelers customers and that the petitioner has not provided any parking facility inspite of the repeated reminders and the number of opportunities given and assurance given by the petitioner and therefore, by order dated 14.3.2004 the Commissioner

of Police, Ahmedabad dismissed the said appeal confirming the order passed by the Deputy Commissioner of Police, Zone-1, Ahmedabad city. Feeling aggrieved and dissatisfied with the same, the petitioner has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

#. It was the case of the petitioner that there is no breach of conditions of licence and the impugned order of the respondent No.3 is without jurisdiction and that in the city Ahmedabad, most of the restaurants and the hotels do not have any parking facility and / or space of their own, as such, no action is taken and the petitioner has been singled out by the respondents. It is also further submitted that the decision has been taken considering the guidelines of IRC, which have not been supplied to the petitioner and even otherwise, the guidelines cannot take place of statute. It is also further submitted that just outside the restaurant of the petitioner, there is facility of "Paid Parking" provided by the Ahmedabad Municipal Corporation itself and thus, the customers intending to come to the restaurant of the petitioner can park their vehicles at such paid parking place. It is also further submitted that the petitioner has parking space of its own as can be seen from the plan produced with the respondents but the respondents have not taken into consideration the submissions made by the petitioner. Considering the averments made in the petition and it was submitted that the petitioner is already having their own parking facility as per the plan which is at Annexure-I.

#. To verify whether, in fact, any parking facility is there or not as suggested on behalf of the petitioner, this Court directed the learned Assistant Government Pleader to have Panchanama of the place and the restaurant and pursuant to the directions issued by this Court, the Panchanama is produced on record by which it was made crystal clear that there is no parking facility at all as suggested on behalf of the petitioner and as per the plan annexed at Annexure-I and it is only an eye wash by the petitioner to show that they are having parking facility. Thereafter, the matter came to be heard on 5.4.2005 and Shri Nirav Thakkar, the learned advocate appearing on behalf of the petitioner produced additional affidavit and submitted that for the purpose of providing parking facility as per the plan submitted along with the affidavit-in-reply, he wanted some time and therefore, the matter was adjourned. Thereafter, as it was found that inspite of the fact that licence is also cancelled, the petitioner is running the restaurant

without licence and that too, still no action was taken by the concerned authority and prima facie, it was found that even the Police Officers were favouring the petitioner to run restaurant without licence and that too when the matter was pending before this Court and therefore, this Court by order dated 26.4.2005 directed the authority to inform this Court what action has been taken for running the restaurant without licence. Even considering submissions on behalf of the petitioner that they have provided parking facility / place in their building itself and that they have produced sketch / map sanctioned by the Municipal Corporation and to verify the same, this Court directed the Ahmedabad Municipal Corporation to be joined as the party respondent and accordingly, the Commissioner of Municipal Corporation was directed to appraise this Court whether parking as per the sanctioned plan has been provided by the petitioner or not and construction is in accordance with law with the sanctioned plan or not ? In response to the same, Shri R.M.Chhaya, the learned advocate appearing on behalf of the Ahmedabad Municipal Corporation has submitted that there is no parking facility and/or space available as per the sanctioned plan and the area shown for parking while obtaining B.U.Permission has been converted into for different use and hence, there is no provision / availability of parking in the building and the requirement for parking area is 304.70 sq.mtr.

#. Thereafter, the matter came to be heard on 6.5.2005. Shri Sudhir Nanavati, the learned Senior Advocate appearing on behalf of the petitioner has submitted that now the petitioner has already provided parking facility as per the plans which was sanctioned by the Ahmedabad Municipal Corporation and that necessary photographs are also produced on record showing that the adequate parking facility as per the sanctioned plan is provided. Shri Nanavati, the learned senior advocate has also produced one undertaking sworn by the petitioner who is the Director of Rasranjan Food Products Ltd. to the effect that they have provided parking facility for 4 cars, 13 scooters and 35 by-cycles and such parking facility to the aforesaid extent is already made in the basement in the concerned building and necessary assistance will be provided to the customers and guests coming to their restaurant for parking their vehicles. It is also further provided in the undertaking that to facilitate the customers and guests, necessary indication and / or board have also been put up at the entrance of the basement and over and above the aforesaid, they will provide security personnels to guide the vehicles to go in the basement for the purpose of parking. The

undertaking is already on record.

#. In view of the aforesaid undertaking and submissions, now the larger question challenging the action of the respondents to direct the petitioner to have parking facility, as such, is not required to be gone into. However, it is required to be noted that even as per the Circular issued by the Commissioner of Police, Ahmedabad city for the purpose of granting the licence to run the guest house / hotel and restaurant, one of the requirements is that only after having satisfied with the facility for parking is provided as per the IRC standard, then and then only the licence is required to be granted / renewed. The said Circular is also directed to be taken on record. Along with the said circular, the standard / norms fixed by IRC dated 13.5.2004 is also annexed. It was contention on behalf of the petitioner in the main special civil application that in the city of Ahmedabad, most of the restaurants do not have any parking facility and / or space of their own and inspite of that, in case of such hotels and / or restaurants, no action is taken and the petitioner has been singled out by the respondents and that so much so, most of the adjoining restaurants which do not have any parking place of their own, no action is taken. To that, Shri Dipen Desai, the learned AGP has submitted that as such the licencing authority and / or the respondents are bound to see that the parking facility is provided by the concerned restaurant / hotel and that as per the circular issued by the Commissioner of Police, Ahmedabad City which is for the purpose of issuance of licence to run the restaurant / hotel and the parking facility is must as per the norms fixed by the IRC. Under the circumstances, the respondents at the time of issuing the fresh licence/s and/or even at the time of renewal of licences, are directed to comply with their own circular and the guidelines for the purpose of providing the parking facility by the concerned restaurant / hotel in the city of Ahmedabad. In future, the concerned respondents i.e. the licencing authority while granting the licence to run restaurant / hotel and even at the time of renewal of licence itself, one of the conditions is added that the concerned restaurant / hotel is to provide parking facility of their own. Both the respondents are directed to see that Circular / guidelines issued by the Commissioner of Police, Ahmedabad city dated 13.5.2004 and any other guidelines, circulars, rules and regulations are strictly complied with henceforth.

#. However, so far as the present case is concerned, as

submitted by Shri S.I.Nanavati, the learned Senior Advocate appearing of the petitioner that they have already provided parking facilities as per the plan sanctioned by the Ahmedabad Municipal Corporation and even as per the undertaking is filed by the petitioner, the respondent No.3 is directed to reconsider its decision with regard to grant of licence in favour of the petitioner considering the latest position and after having satisfied that the petitioner has now provided the parking facility as per the requirements and also the plans sanctioned by Ahmedabad Municipal Corporation. Such action is required to be done within a period of one week from the date of receipt of this order.

##. The petitioner is also directed to comply with the undertaking which is filed in the present special civil application and is directed to continue to provide the parking facility to their customers and guests coming to the restaurant for parking their vehicles and that petitioner must ensure that the vehicles are parked in the parking facility provided by them and will inform the customers / guests with regard to parking facilities provided by the petitioner. The respondent No.3 is also directed to have inspection after regular intervals of every quarter through its officers to satisfy itself that the petitioner is continued to provide parking facility to its customers and guests coming to their restaurant in future.

##. With aforesaid observations and direction, the present special civil application is disposed of accordingly. However, while disposing of the present special civil application, it is made clear that this Court has not expressed any opinion with regard to construction carried out by the petitioner so far as the building is concerned, to the effect that whether the same is in accordance with the sanctioned building plan approved by Ahmedabad Municipal Corporation and / or the same is in accordance with the building rules and regulations or not. This petition is restricted only with regard to providing of parking facility by the petitioner in connection with grant of licence for running the restaurant. Thus, under the circumstances, this Court has not expressed any opinion either way and by this order it may not be construed that this Court has certified and/or held in any way that the building in question is constructed as per the sanctioned plan and /or as per the building regulations or not. It is ultimately for the appropriate authority to take an appropriate decision in accordance with law and on merits considering the building regulations and byelaws and the

sanctioned building plan.

With this clarification, the present special civil application stands disposed of in aforesaid terms.

Rule is discharged with no order as to costs.

Direct Service is permitted.

Date : 9.5.2005 [ M.R.Shah, J.]
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